

J. RICHARD CARR
ATTORNEY AT LAW
5528 TRENT STREET
CHEVY CHASE, MARYLAND 20815
(301) 656-7053

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Admitted in D.C.
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August 5, 2002

DOCKET FILE COPY ORIGINAL
Fax: (301) 718-8407
jrcarr@att.net

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

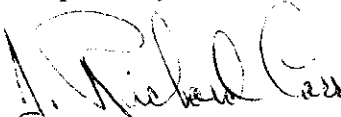
Re: Rulemaking comments
MB Docket No. 02-143
RM-10392

Dear Ms. Dortch:

Transmitted herewith, on behalf of Radio One of Indiana, LLC ("Radio One"), are an original and four copies of its Comments in the above-referenced rulemaking proceeding. Radio One is the petitioner in this proceeding and the "Comments of Radio One" are being submitted in response to the Notice of Proposed Rulemaking released June 14, 2002 which set a Comment Date of August 5, 2002. Also attached hereto is FCC Form 162.

If there should be any questions in connection with this matter, please communicate with the undersigned.

Respectfully submitted,



J. Richard Carr
Counsel to
RADIO ONE OF INDIANA, LLC

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FCC 162
April 2000

Approved by OMB
3060-0919

**Federal Communications Commission
Commission Registration System (CORES)
CORES Certification Form**

I, J. Richard Carr, Esq., certify that the FCC Registration Number (FRN) listed below is true and correct to the best of my knowledge, information and belief.

FCC Registration Number (FRN)

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ENTITY NAME:

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ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION RECEIVED

Washington, DC 20554

AUG - 5 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Amendment of Section 73.202(b)) MB Docket No. 02-143
Table of Allotments,) RM-10392
FM Broadcast Stations)
(Lebanon and Speedway, IN))

To: Chief, Allocations Branch

COMMENTS OF RADIO ONE

Radio One of Indiana, LLC¹, (formerly Radio One Licenses, Inc.), ("Radio One"), licensee of WYJZ, Lebanon, Indiana, by its attorney, hereby submits its comments in response to the Notice of Proposed Rule Making ("NPRM") released June 14, 2002, which sought comments on the Radio One proposal to amend Section 73.202(b) of the Commission's Rules to change the FM Table of Assignments to reallocate Channel 265A from Lebanon, Indiana to Speedway, Indiana and to modify the license of radio station WYJZ to reflect the changes.

1. The reallocation of Channel 265A from Lebanon to Speedway will provide Speedway with its first aural transmission service. Lebanon will continue to have a local aural transmission service provided by radio station WIRE(FM).

¹ The name of the licensee was changed from Radio One Licenses, Inc. to Radio One of Indiana, LLC as of December 31, 2001.

2. In the NPRM, the Commission noted that its own engineering analysis showed that from the proposed site, there would be a loss of service to approximately 35,000 persons and it asked petitioner to address the gains and losses and whether the proposal will serve the public interest. It also requested additional information on the service area of WIRE(FM) and the extent of its service to Lebanon.

Gains and Losses

3. Attached hereto as Exhibit 1 is Engineering Exhibit EE-RM prepared by Mullaney Engineering, Inc.² which shows that WYJZ presently provides a 60 dBu service to 755,637 persons in an area of 2,315 square kilometers. The allotment at Speedway would result in service to 1,118,137 persons in an area of 2,481 square kilometers - an increase of 425,000 persons (56.3 percent). The Commission analysis found that approximately 35,000 persons will lose the service from Station WYJZ. Thus, the proposed reallocation would result in a net gain of service to 390,000 persons. As far as service to the loss area is concerned, the engineering exhibit shows that the entire loss area will continue to receive service (excluding WYJZ) from at least 13 and as many as 25 other existing AM and FM services. The Commission considers five reception services to be "abundant" service. *See, LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

WIRE Service Area

4. On the issue of the extent of the service provided by WIRE(FM), the attached Engineering exhibit shows that the WIRE(FM) transmitter is located within 2 kilometers of

² The engineering Statement refers to the former licensee name, Radio One Licenses, Inc., which was the licensee name used in the Petition for Rulemaking.

the northeast boundary of Lebanon and that WIRE(FM) provides a City- Grade service to all of Lebanon and the surrounding area.

Elimination of Existing Short-Spacings

5. WYJZ presently operates as a short-spaced Class A facility utilizing a directional antenna. As noted in the NPRM, reallocation to Speedway will enable WYJZ to operate as a fully spaced Class A facility and will eliminate two existing short-spacings. First, between WYJZ and WMGI which operates on Ch. 264B at Terre Haute, Indiana, and, second, between WYJZ and WWKI which operates on Ch. 263B at Kokomo, Indiana. Thus, the proposal would be consistent with Commission policy of reducing or eliminating existing short-spacings. *See, Eatontown, Point Pleasant and Red Bank, New Jersey*, 5 RR 2d 1762 (1965). The Commission has found the elimination of two existing short-spacings to be "compelling factors" weighing in favor of a proposed reallocation. *See, Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville, and Social Circle, Georgia*, 15 FCC Rcd 9971 (2000).

6. Since Speedway is located in the Indianapolis Urbanized Area, Radio One submitted a showing that Speedway meets a majority of the eight factors set forth in *Faye & Richard Tuck, Inc.*, 65 RR2d 402; 3 FCC Rcd 5374, 5378 (1988). In the NPRM, the Commission requested comment on this issue. As will be shown below, a majority of the Tuck factors support the conclusion that Speedway is independent of the Urbanized Area.

7. The eight factors the Commission considers in assessing the independence of a specified community are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller

community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. All eight factors need not favor the applicant; if a majority of the factors demonstrate that the specified community is distinct from the urbanized area, the Commission will treat it as an independent community. *Id.*; *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095, Paras. 9-11 (1996) (finding that the proposed community was independent, although it lacked its own telephone directory and local newspaper, and was included in the urbanized area's market by Arbitron); accord, *Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3560, Para 3 (1997) (citing *Parker*).

Speedway is Independent of the Urbanized Area

8. A review of the facts concerning Speedway demonstrate that Speedway is an independent community. Submitted below is a showing under the eight Tuck factors which includes, under the discussion of Tuck Factor 4, a review of the history and characteristics of Speedway.

Analysis of Tuck Factors

Tuck Factor 1

Workplace of Residents

9. Radio One has been unable to obtain complete and accurate data on the exact number of residents who work in Speedway. The two largest employers in Speedway, Allison Transmissions, with approximately 4000 employees, and Praxair, reported that their databases did not enable them to extract data on the place of residence of its workers. However, Coca Cola Bottling Co., a division of Coca Cola Enterprises of Atlanta, employs approximately 450-500 persons. The Human Resources office reported that about 22 percent of its workers are residents of Speedway. As shown below, there are located in Speedway (a) four divisions of Fortune 500 companies, (b) 12 industrial businesses which supply services and supplies to business and industry, (c) the largest shopping mall in central Indiana with approximately 71 businesses, and (d) over 200 different retail and professional businesses. All of these businesses provide a substantial opportunity for employment in Speedway.

Tuck Factor 2

Newspaper or Other Media That Covers Local needs and Interests

Newspapers

10. There are two related weekly newspapers published in Speedway by the Press Newspapers Co.- The West Side Messenger and the Speedway Town Press. Each issue of these papers is usually 12 pages in length. They are distributed throughout Speedway without charge. The masthead and front pages of the Messenger and Town Press are

different but the balance of each issue of the papers is the same. The newspapers provide an advertising outlet for local businesses, and other advertisers. The newspapers feature a business service directory and a classified ad section including "help wanted ads". The papers feature information on upcoming activities in Speedway and articles about Speedway organizations, and Speedway history. Attached hereto as Exhibit 2 are pages from the March 21, 2001 and July 25, 2001 editions of the newspapers which show the use of the papers by local organizations and businesses, and which contain articles discussing the history of Speedway.

Tuck Factor 3

Perception of Speedway as Being Independent

11. The discussion of the history of Speedway discussed below under Tuck Factor 4, and the prevalence of historical articles about the town in the local newspapers demonstrate that Speedway is perceived by residents as being separate from the larger metro area.

Tuck Factor 4

Local Government and Elected Officials

Background/History

12. Plans for the town of Speedway began in 1912 when the layout of the future city was platted. In July, 1926, the residents of Speedway petitioned the Marion County Commissioners to change their status to the Town of Speedway. For 46 years, Speedway was a completely separate, autonomous town within Marion County adjacent to Indianapolis.

13. In 1969 and 1970, the Indiana general assembly debated and ultimately adopted a bill that consolidated many of the governmental functions of Marion County and the City of Indianapolis. At the same time, the legislature decided not to annex into the consolidated government, four cities/towns which the law defines as "excluded cities". The four cities are Beech Grove, Lawrence, Southport and Speedway. Each of these four Cities/towns retained their separate municipal powers and governing bodies. Speedway residents retained the power to elect the town Mayor, Town Clerk/Treasurer and the members of the town council. The town government retained the right to levy taxes to support its operations. However, since the state law creating the consolidated government resulted in the Mayor of Indianapolis and the City-County Council having county-wide functions and powers, the citizens of Speedway and the other excluded cities were given the right, under state law, to have input into the selection of and to vote for (1) the Mayor of Indianapolis, (2) a member of the City-County Council representing their community, and (3) four at-large (countywide) councilors. The consolidation of the City of Indianapolis and Marion County did not merge all police and fire departments or the schools. As a result, Marion County has 12 different fire departments (8 township fire departments and the City of Indianapolis department, and, departments in the towns of Lawrence, Beech Grove and Speedway).

Local government

14. Speedway, Indiana, is a self-governing, incorporated city located within the boundaries of Marion County, Indiana and covers approximately 9 square miles and has a year round population of approximately 13,000. Speedway has an elected five-member town

council which meets twice per month. The office of President of the council is rotated every ten months. There is also an elected Clerk Treasurer. Elections are held every four years. The town government operations are located at the Town Hall. Speedway has taxing authority and levies both residential and business property taxes. There is a town Zoning Board which meets each month and issues permits and variances for building projects. A photograph of Town Hall is included along with other photographs of town buildings in Exhibit 3.

Tuck Factor 5

Telephone Directory or Zip Code

Telephone Directory

15. Telephone service to the Indianapolis Urbanized Area is provided by Ameritech. Ameritech publishes a main Yellow Pages directory and a main White Pages directory for Indianapolis. The Indianapolis Yellow Pages cover Indianapolis and eleven other communities including Speedway. The White Pages directory includes residence and business listings for Indianapolis and 35 other listed communities; that list does not include the Town of Speedway. See Exhibit 4 (cover and second pages of directories).

16. Speedway does not have its own separate telephone directory, but Speedway telephone listings are included in a regional directory issued by Ameritech - "Indianapolis West Suburban Directory"- which combines Yellow and White pages in a single volume. See Exhibit 5. The map of the West Suburban Directory Coverage Area is shown on page 2 of Exhibit 5, and shows that that the coverage area includes Speedway and 13 other communities located west of Indianapolis but not Indianapolis. Advertising in the "West

Suburban Directory" is aimed primarily at residents in these fourteen communities outside of Indianapolis.

Zip Code

17. There is a branch of the U. S. Post Office in Speedway. All Speedway listings are included in Zip Code 46224, but that Zip Code also covers some Indianapolis listings adjacent to Speedway.

Tuck Factor 6

Commercial Establishments, Health facilities, Transportation, etc.

Businesses

Major Industry

18. There are four divisions of Fortune 500 companies located in the Town of Speedway.

Allison Transmission, a division of General Motors, is the leading maker of transmissions for buses, trucks and military vehicles. There are approximately 4,000 employees at the Speedway plant. It has been located in the Town of Speedway since the town was founded in 1915.

Praxair Surface Technologies, Inc. is a division of Praxair, Inc., a 5 billion dollar Fortune 500 company which produces atmospheric and process gases, and specialty gases for food packaging, as well as surface technologies. There are two plants located in Speedway. The surface technologies business applies metallic and ceramic wear-resistant coatings to printing press components and paper and steel finishing equipment parts and equipment, and provides jet aircraft engine and helicopter and airframe component overhaul services, and sells specialty polishing powders.

Coca Cola Bottling Co., a division of Coca Cola Enterprises, produces Coca Cola products for a tri-state area and employs approximately 450-500 persons.

Marathon Ashland Petroleum LLC (MAP) is a division of Marathon Oil Co., the nation's 6th largest petroleum refiner and supplier. MAP is one of the largest wholesaler suppliers of gasoline and distillate to resellers and end-users such as airlines, railroads, and utilities.

Industrial Businesses

19. There are 12 businesses which are suppliers of products/services to business and industry such as steel castings, wholesale lubricants, wholesale oil and gas, roofing materials, crane rental, building products, and printing/mailing services. A complete list of these businesses is in Exhibit 6, page 1.

Other Speedway Businesses

20. The Speedway Super Center shopping mall is the largest in central Indiana. It is a half-mile long, 65 acre, mall which has 85 million dollars in gross sales. There are 71 primarily retail businesses in the mall which sell products and services such as shoes, clothing, books, jewelry, tires, fast food, carpet, tax services, cell phones, and which include branches of four banks. A complete list is in Exhibit 6, page 3.

21. In addition to the Speedway Super Center, there are 38 businesses located in the Corporate Square West office park located at 5610 Crawfordsville Road which include employment agencies, a loan company, taxi services, accountants, janitorial services, duct cleaning service, tools, roofing contractor and a mental health clinic. A complete list is in Exhibit 6, page 2.

22. In addition to the businesses listed above, there are approximately 160 other businesses located on the main business thoroughfares in Speedway. A complete list of those businesses by street location is set forth in Exhibit 6, pages 4-8.

23. Other businesses of note located in Speedway are: American Art Clay Co., which since 1919, has been a manufacturer of ceramic materials and products including pottery equipment such as kilns and various craft lines. It has approximately 170 employees; Composipech Zip Speed, the largest manufacturer of wheels for racing bicycles which has approximately 50 employees; and, Speedway Racing Development Co. which has 13 employees and builds 60 percent of the engines used in race cars which compete in the year-long Indianapolis Racing League.

24. In summary, there are several major companies and over 200 different retail and professional businesses of all types located in Speedway including supermarket, banks, appliances, cafes and fast food restaurants, jewelry, insurance, gas stations and auto services, hair salons, mortuary, insurance, law, and medical. Public transportation is provided by the regional bus system. There is a branch of the Indiana State Motor Vehicle Licensing Office.

Medical/Health Facilities

25. Speedway has a variety of medical professional/health facilities including dentists, ophthalmologists, chiropractors, family physicians, physical therapists, mental health clinic, and pharmacies. There are several child/day care centers and a adult retirement community. See Exhibit 7 for a partial list of medical/health facilities located in Speedway. There is no hospital in Speedway but the nearest hospital is approximately two miles away.

Community Service Organizations

26. The Town of Speedway has the following community service organizations: VFW Post No. 1587, National Exchange Club, Optimist Club, Kiwanis, Moose, Odd Fellows, Masonic Lodge No. 729, American Legion Speedway Post 500, and Speedway

Lion's Club. There is also a Chamber of Commerce with approximately 130 corporate and private members.

Churches

27. There are a number of religious institutions in Speedway, which include:

Saint Andrew's Lutheran Church
John Knox United Presbyterian Church
Speedway Church of Christ
Speedway Church of the Nazarene
Speedway United Methodist Church
Speedway Baptist Church
Saint John's Episcopal Church
St. Luke's United Church of Christ
Saint Christopher Catholic Church

Tuck Factor 7

Separate Advertising Market

28. The separate West Suburban Yellow Pages provides advertisers with an alternative to the main Indianapolis Yellow Pages, and/or, an additional advertising outlet for reaching customers in communities located west of Indianapolis. This is shown by the fact that various professionals undertake the additional expense to publish advertisements in both the main Indianapolis Yellow Pages Directory and the West Suburban Directory. Attached hereto as Exhibit 8 are pages from both the main Indianapolis directory and the West Suburban directory which show examples of the dual use of these directories by dentists and attorneys who placed large ads in both directories. Exhibit 8, pages 1 and 2 are ads placed by a law firm in both the Indianapolis Yellow Pages and the West Suburban Yellow Pages. Exhibit 8, page 3, is a different law firm's double page ad in the main Indianapolis Yellow Pages directory; page 4 is a single page ad by the same law firm in the

West Suburban Yellow Pages directory. In addition, Exhibit 8, pages 5, 6 and 7 are advertisements by professionals placed only in the West Suburban Directory. Exhibit 9 is an example of a professional who placed ads in the Speedway newspapers (page 1) who also placed separate advertisements in the main Indianapolis Yellow Pages (page 2) and in the West Suburban Directory (page 3) in an obvious effort to reach prospective customers in the separate advertising market outside of Indianapolis.

Tuck Factor 8 -

Police, Fire protection, Schools and libraries

Police Department

29. Speedway has its own Police Department. The Police Department has 32 sworn police officers, headed by a Chief of Police and Assistant Chief. There are 32 reserve officers who have the same powers as sworn police officers who work part time and during special events such as the auto races. The department has 36 police vehicles. The officers issue tickets for both parking and moving traffic violations; the parking tickets are paid at the Town Hall and the moving violation tickets are paid through Marion County.

Fire Department

30. Speedway has its own Fire Department which has 30 full time firefighters and a Chief, a Deputy Chief and an Assistant Chief. The department operates two fire stations, one located at 1410 Lynhurst Drive and one at 5639 W. 25th St. Currently, when fully manned, there are five men per station; they work 24 hours on duty and 48 hours off. The department has two 4-man enclosed cab engine pumper trucks with a 1250 gpm pump; a 4-man enclosed truck with a 100 foot aerial platform and a 1250 gpm pump; a Tactical heavy

rescue vehicle; and three Ford Crown Victoria vehicles. It has a new 2001 Saulsbury rescue engine with a 1500 gpm pump with a 6-man enclosed cab. Twenty-nine of the firefighters are certified as advanced Emergency Medical Technicians, and, there is one paramedic. The department has a dual response agreement with Wayne Township Fire Department.

Waterworks & Wastewater Plant

31. Speedway has its own Waterworks to supply water to town residents and its own sewage treatment plant. The Waterworks has two separate water treatment plants: a 3 million gallon per day plant to treat surface water (creek, dam), and a 10 million gallon per day groundwater plant to treat well water. The separate wastewater/sewage plant has a capacity of 7.5 million gallons per day. The Town of Speedway bills users for water use.

Street Department

32. There is a Street Department which has a Commissioner and three fulltime workers; parttime workers are hired on a seasonal basis. The department has responsibility for the paving of streets and the patching of potholes as well as sidewalk and sewer maintenance.

Public Library

33. Speedway has its own separate public library which is not a branch of the Marion County system. There are seven full-time and 15 part-time staff members. The library has approximately 80,000 print and non-print items. The library offers various adult and children's programs.

Parks & Recreation

34. There are two town parks which contain a baseball field, a softball field, a soccer field, various pieces of playground equipment and picnic facilities such as tables, grills, etc.

Schools

35. The Speedway School District is within the town's boundaries. The district has a Senior High School, a Junior High School and four elementary schools. The town also has a parochial elementary school. The Speedway public schools had an enrollment (2000-01) of 1, 626 students. Overall, 22 percent of the Speedway student population is minority.

SUMMARY OF TUCK FACTORS

Factor 1. Coca Cola Bottling with approximately 450-500 employees estimated that approximately 22 percent of its employees are residents of Speedway which is a larger percentage than shown in the 1990 census which had a percentage of 15.7 percent of workers 16 years and over living and working in the Town of Speedway. The largest employers, Allison Transmission and Praxair were unable to provide estimates. The presence of major businesses and approximately 200 other retail, professional and service businesses provide a substantial opportunity for employment in Speedway.

Factor 2. As shown above, two related weekly newspapers are published in Speedway which provide local news, cover local interests and activities. They provide an advertising outlet for businesses and professionals; information about Speedway organizations and activities; and offer a classified ads section.

Factor 3. The showing on the legal status of Speedway and the prevalence of historical articles about the town in the newspapers shown in Exhibit 2 demonstrate that Speedway is perceived by residents as being separate from and independent of the larger metro area.

Factor 4. As shown above, Speedway has its own local government and elected officials with a Mayor, Clerk/Treasurer and Town Council and the power to levy taxes.

Factor 5. There is a branch of the US Post Office in Speedway. All Speedway listings are in Zip Code 46224, but that Zip Code also covers some adjacent Indianapolis listings.

Factor 6. As shown above, Speedway has numerous commercial establishments of every type. There are medical professionals and a clinic in Speedway. The nearest hospital is outside of Speedway but is only approximately two miles away. The transportation system is the regional system which serves the Urbanized Area. Residents do not have to travel outside of Speedway for their household and personal needs.

Factor 7. Speedway is a different advertising network from Indianapolis. This is established by the fact that there are two newspapers published in Speedway, and, a separate West Suburban telephone directory for specific enumerated communities located west of the central city. As shown in Exhibit 8, various professionals undertake the additional expense of advertising in both the Indianapolis Yellow Pages and the separate "West Suburban" combined White and Yellow Pages. In addition, these professionals advertise also in the two weekly newspapers published in Speedway.

Factor 8. Speedway has its own independent police and fire departments. It also has its own schools including a Senior High School, a junior High School, four elementary schools, and, one parochial school. Speedway has its own public library.

It is clear from the foregoing that a majority of the Tuck Factors demonstrate that Speedway is distinct from the urbanized area and is an independent community.

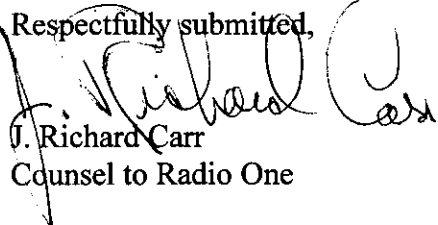
CONCLUSION

The proposed reallocation will result in a preferential arrangement of allotments as required by *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon*, 5 FCC Rcd 7094 (1990). The FM allotment priorities are: First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1988). Reallocating Channel 265A to Speedway would provide

first local aural transmission to Speedway which meets Priority 3 . By eliminating two existing grandfathered short-spacings, the reallocation would meet Priority 4. The reallocation will not create any underserved areas. The area losing service will remain well served because there will be at least 13 and as many as 25 other existing AM and FM services to the entire loss area. The community of Lebanon will not lose its only local transmission service. All of Lebanon and the immediate surrounding area will continue to be served with city-grade service by WIRE(FM). Finally, it is clear that a majority of the Tuck factors demonstrate that Speedway is distinct from the urbanized area and is an independent community.

In view of the foregoing, the Commission should amend Section 73.202(B) of the Commission's Rules to reallocate Channel 265A from Lebanon, Indiana to Speedway, Indiana and modify the license of radio station WYJZ accordingly. Radio One will file an application to modify its facilities upon favorable consideration and will promptly construct the new facilities upon grant of the application.

Respectfully submitted,


J. Richard Carr
Counsel to Radio One

5528 Trent Street
Chevy Chase, MD 20815
301-656-7053

Date: August 5, 2002